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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fourth session

SUMMARY RECORD OF THE 1324th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 15 March 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

later: Mr. DIACONU

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The meeting was called to order at 10.15 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

Australia (CERD/C/347) (continued)

1. At the invitation of the Chairman, the members of the delegation of Australia resumed their places at the Committee table.

2. Mr. ORR (Australia) replied first to the questions that had been put to the Australian delegation by the Country Rapporteur, Ms. McDougall. He said that there was no discrepancy between her views and those of Australia on many important points. The Mabo decision, handed down by the High Court in 1992, had effectively recognized for the first time the land rights of indigenous peoples in Australia and had been confirmed by the Native Title Act, enacted by the Australian Government and Parliament with the aim of protecting those rights. That Act had subsequently been amended by the Native Title Amendment Act 1998. Regarding the effects of the Wik decision of 1996, i.e., that a pastoral lease did not necessarily extinguish the effects of a native title recognized in the Native Title Act and could coexist with such a title, he recalled the rule according to which, when there was an inconsistency between native title rights and the rights of a pastoral leaseholder, the rights of the latter prevailed only to the extent of the inconsistency. The Wik decision and other subsequent decisions had been adopted in order to prevent the partial extinguishment of native title from becoming permanent and to remedy the fact that native title rights that were still in force might be supplanted by the rights of pastoralists.

3. Regarding the extent of the rights of pastoral leaseholders, the Australian Government considered that the Wik decision had created uncertainties by affirming that those rights did not necessarily extinguish native title and could coexist with it. Moreover, the rights of pastoralists were very poorly defined and varied, sometimes considerably. In some parts of the territory, they covered only pastoral activities, while in others they authorized a vast range of sometimes substantial activities in intensive agriculture, forestry and fish farming. The rights of native title-holders were no better defined in the decision, since it did not give any details regarding native title-holders or the substance of the rights in question, so that the relationship between the two sets of rights - native title rights and the rights of pastoral leaseholders - was not specified. The Native Title Act had been enacted without giving consideration to the coexistence of the rights it protected with those arising from pastoral leases and it therefore contained no provision for resolving that problem. That was why it had happened that a decision contrary to the Wik decision had been handed down. The significant uncertainties raised by the Wik decision had provoked lively public and political debate in Australia.

4. In reply to Ms. McDougall's questions concerning the validation of acts that were invalid under the Native Title Act, he confirmed that many measures validated under the amended Act could have been considered invalid under the Wik decision. He explained that the Native Title Act had contained important measures for protecting native title as well as restrictions on possible

government decisions to issue mining grants, which were supposed to be subject to a negotiation procedure. Previously, it had been assumed that that type of grant concerned mainly Crown lands, which automatically came under the negotiation procedure, and that native title rights to lands granted to leasehold or freehold had been extinguished, including lands granted to pastoral leasehold. It had therefore been judged unnecessary to implement the negotiation procedure before issuing mining grants for pastoral lease lands. According to the Wik decision, there was no basis for that assumption, since native title rights to lands subject to such leases could exist and some grants that had not been through the negotiation process could be considered invalid.

5. The Country Rapporteur had asked why the Government had not conducted a case-by-case analysis of grants and whether the blanket validation provided for in the Native Title Amendment Act was incompatible with the decisions. He replied that there was nothing in the Wik decision that required an analysis of each decision and that the Government had considered it necessary to validate the measures that had been taken on the assumption that no native title to pastoral lease lands had existed prior to the Wik decision. As a result, grants made irregularly but in good faith by third parties were to be validated under the Native Title Amendment Act, while care was taken to alleviate as much as possible the effects of validation on native title. That was why the Government had made provision for a notification regime for mining grants likely to be called into question, which had been incorporated into the amended Act at the request of indigenous and Aboriginal groups. Compensation was paid to native title-holders whose rights had been affected by grants that had been revalidated after being declared invalid. In any case, the issuing of mining grants did not entail the extinguishment of native title, since the rights to granted land were restored to the holders as soon as mining activities were finished. Validation was therefore compatible with the Committee's General Recommendation XXIII (51) concerning indigenous peoples since it made provision for restitution and compensation.

6. The new validation regime was of much more limited scope than that of 1993, which had governed all land grants effected in Australia since 1798, because it related only to acts carried out during the 1993-1996 period and to land granted under pastoral leases.

7. Ms. McDougall had asked if it were not the case that the Government and the miners had acted recklessly in issuing or accepting grants during the period under consideration, without following the procedure relating to native title or heeding the Social Justice Commissioner's warnings. His reply was that the Government had acted in accordance with general legal opinion - particularly opinions or decisions of the High Court, the Federal Court, the National Native Title Tribunal and eminent members of parliament - as well as the preamble to and article 47 of the Native Title Act, under which native title rights had not been applicable to pastoral lease lands.

8. Ms. McDougall had considered that the validation regime was discriminatory because it concerned exclusively acts affecting native title without offering any countervailing benefits. He rejected any presumption of discrimination, because the Native Title Act itself, of which the validation regime was a part, dealt only with native title, which could not be considered

discrimination against native title. The fact that the validation regime concerned only acts carried out during the 1993-1996 period did not constitute discrimination either; nor did the fact that only grants carried out in good faith in ignorance of the law or due to the unspecific nature of the applicable legal provisions could be validated. The Government was therefore of the opinion that the Act continued to provide significant countervailing protections and benefits to native title-holders.

9. Ms. McDougall and other members of the Committee had expressed an interest in the confirmation regime. He could reply that the Australian Government's policy in fact aimed to specify which native title rights had been extinguished and which had not and could therefore be claimed, by establishing a system for ensuring the certainty, predictability and legitimacy of objectives, based on the Mabo and Wik decisions.

10. He confirmed that the provisions of the common law were discriminatory. That was why the Native Title Act aimed to prevent any new extinguishment of native title resulting from the grant of freeholds, through provisions that were much more effective than those of the common law. The Act was not focused on the past but rather aimed to set precise rules for the future and to alleviate certain effects of the common law. Article 47 of the Act allowed native title-holders to claim lands even in cases where their rights had been extinguished under the common law, and even when extinguishment had been confirmed by the confirmation regime. They could, moreover, claim rights to lands granted as freeholds in cases where the original titles no longer existed and obtain the restitution of such lands.

11. On the question of why the courts could not adopt a case-by-case approach, he said that, under such a system, the common law courts would have to consider some 60,000 leases covering 600 categories in hearings that would be not only lengthy and expensive but also adversarial and would cause deep divisions in the country's rural communities. Moreover, since indigenous claimants would generally lose cases by invoking the Wik and Mabo decisions, the Government preferred to refer to the Native Title Amendment Act, which, in accordance with the aforementioned decisions, confirmed the extinguishment of native title on only 21 per cent of Australian territory. Indigenous claims could therefore apply to the remaining 79 per cent of the territory on the basis of fair and rational rules. That avenue gave access to the Land Fund, which had been granted 1.3 billion dollars to enable indigenous people to buy back lands for which the extinguishment of their rights had been confirmed. The Government considered that the system of buying back land by agreement with grant-holders was preferable to litigation.

12. Regarding Ms. McDougall's question on the Miriuwung and Gajerrong case, he said that most of the lands concerned were pastoral lease lands. The Government considered that the ruling in that case was not in conformity with the Wik and Mabo decisions and was appealable.

13. Ms. McDougall and Mr. Banton had also asked whether the confirmation regime divested native title-holders of their rights. The Australian Government refuted that suggestion. The regime merely recognized that native title rights were extinguished under grants of pastoral leases and freeholds relating to 21 per cent of lands made over the past 200 years. The Australian

Government did not believe that its historical position was incompatible with the provisions of the Convention and the Committee's General Recommendation XXIII on the rights of indigenous peoples. It acknowledged a certain obligation under the Convention to facilitate the restitution of rights to indigenous people where possible and to prevent new extinguishments of their rights, except with the agreement of holders of such rights or by a non-discriminatory acquisition process (para. 45), in accordance with the provisions of the Native Title Act.

14. Regarding the primary production regime, he said that the system in place aimed to achieve a balance between the rights of native title-holders and the rights of pastoral leaseholders. The Native Title Act laid down basic rules on the activities that pastoral leaseholders were authorized to engage in and defined a compensation regime for native title-holders affected by such activities. It provided particularly that a leaseholder could neither carry out activities outside the primary sector nor upgrade his or her title to exclusive leasehold or freehold.

15. The Native Title Act recognized native title-holders' right of access to lands and their right to negotiate substitution regimes as well as other benefits and protections. Given that neither the common law nor the Convention required native title-holders to be given precedence on pastoral lease lands, Australia believed that the Act established a balance between two sets of concomitant interests: the legitimate rights of pastoral leaseholders to engage in their activities and the protection of the important land ties of native title-holders. Since the Government would not be in a position to establish a complete set of rules laying down how the two groups should coexist on the lands concerned, it was urging them to conclude agreements in that regard, by enacting provisions aimed at making their task easier.

16. He explained, moreover, that the right to negotiate was protected by law, that it was of a special nature and that native title-holders were recognized as having that right. The Native Title Amendment Act 1998 had effectively rescinded the right in certain areas, but not those mentioned by Ms. McDougall. That did not mean that native title-holders no longer had rights but that, when those rights had been extinguished, procedures had to be put in place to address the interests of indigenous people. For example, while the amended Act had withdrawn the right to negotiate over exploration and mining activities on indigenous lands and over certain pastoral lease rights, special protections had been expressly established. An appeal for mediation in the event of litigation had been introduced and an independent person had been appointed to conduct hearings on such issues. Injured persons had been compensated and protected sites created. When the text of the 1998 Act was being negotiated, many proposals for amendment had been tabled by representatives of indigenous people and a compromise solution had been found, taking into account the needs expressed by native title-holders. The Government had done much to ensure that rights to negotiate would be respected and that adequate protections and standards for compensation had been put in place in the event that they were not respected.

17. Expanded consultations had been conducted since 1997 with representatives of Aboriginal people, but also with representatives of other

minority groups, during consideration of the Native Title Amendment Act. Throughout that process, in which the Prime Minister had participated directly, the Government had constantly declared itself willing to discuss the draft amendments. Consequently, a number of concerns of indigenous people had been taken into account. Several working groups had been created, in which representatives of native title-holders had taken part and had thus been able to express their views to the members of parliament responsible for amending the 1993 Act.

18. The rights of indigenous people had not been curtailed. All the questions currently being discussed had been raised in the public debate and the parliamentary process on the subject. It was, however, true that the consent of indigenous and Aboriginal people had not been obtained before the adoption of the Native Title Amendment Act 1998. Australia regretted that fact but it should be noted that the Government had attempted to pass the Amendment Act by consensus. That had not been possible and the Government had been obliged to enact the Act as it saw fit. Australia considered that it was also important to ensure a balance between native title rights and other rights, and that it was necessary to take account of the requirements of leaseholders and mining developers.

19. Emphasizing that Ms. McDougall had asked many questions about the relationship between native title and the Racial Discrimination Act, he explained that nothing in the Native Title Amendment Act affected the operation of the Racial Discrimination Act 1975. That issue had been considered by the High Court, which had concluded that, in the event of an incompatibility between an Act containing specific rules and an Act containing general rules, the specific should prevail over the general. In the case in question, the Australian Government considered it necessary to study the specific provisions of the Native Title Act and then look at whether they complied with the Racial Discrimination Act. The Government did not consider that it was appropriate to give precedence to the Racial Discrimination Act over the new section 7 of the 1998 Act.

20. Moreover, Australia was aware of its obligations under articles 2 and 5 of the Convention and the need to recognize the equality of different racial groups. However, Australia, which drew a distinction between substantive equality and formal equality, considered that things that were by nature different should be dealt with differently. It was necessary to evaluate different situations and decide the most appropriate way of dealing with them on a case-by-case basis.

21. Ms. McDougall appeared to believe that the Native Title Amendment Act 1998 discriminated against Australian Aboriginals. The Australian Government totally disagreed with that view. It was, however, true that the balance established by the Wik decision between opposing interests, that is, between native title rights and pastoral leaseholders' rights, was delicate and complex. It was also true that some provisions of that decision, notably those that dealt with validation and exploitation of resources, benefited certain interests and that a different approach could have been adopted. Australia admitted in that regard that it would have been possible to allow the courts greater room for manoeuvre, particularly concerning measures to be

taken in pastoral lease cases. However, the fact that one solution had been preferred to another did not mean that Aboriginals had been victims of any racial discrimination.

22. In his view, it was wrong to say that the Native Title Amendment Act was detrimental to the interests of Aboriginals. On the contrary, the Act had had positive effects for them, given that they could now submit claims, which were generally granted, especially when unconditional land rights clauses were no longer applicable. The 1998 Act authorized the purchase of certain lands, even in cases where land rights had been extinguished. A substantial proportion of the 79 per cent of lands in Australian territory to which Aboriginals were entitled had already been granted and 190 restitution claims had already been submitted. The 1998 Act had also set up several representative bodies to help indigenous claimants to reach agreement with local authorities or mining developers. Those bodies, which were funded by the Federal Government, favoured mediation.

23. New provisions had been adopted because the Government was in favour of reaching agreement on matters of native title. That had meant that activities on pastoral lease lands could be protected but also that Aboriginal title-holders could be compensated if their rights had been affected. Some non-monetary compensation had been granted, such as land benefits.

24. The CHAIRMAN, while welcoming the information provided, said he would have liked the Australian delegation to accord the same importance to the questions asked by Ms. McDougall as to those asked by other members of the Committee at the previous meeting. He gave the floor to members wishing to address comments to the delegation.

25. Mr. van BOVEN said he remained puzzled despite the Australian delegation's explanations. The issues being examined were extremely complex, all the more so because not all the members of the Committee were necessarily familiar with the common law system. He noted that, according to Mr. Orr, native title rights were recognized and protected on 79 per cent of Australian lands, while they were extinguished on the other 21 per cent of the territory. What was the exact nature of the 79 per cent of lands? In other countries - South Africa, the former Rhodesia or countries in Latin America, for example - settlers had taken the best lands and had abandoned the least fertile ones. What was the quality of those lands compared to the remaining 21 per cent?

26. On the question of equality, he said that the Australian Government seemed to be making a distinction between substantive equality and formal equality. The delegation had given a definition of equality that was legally very sophisticated, whereas it would have been better to recognize explicitly that Aboriginals had been marginalized and disadvantaged over the centuries. Their entitlements should be recognized in that light.

27. He pointed out that issues of racial discrimination affected human beings and that it served no purpose to try to hide problems behind semantic nuances.

28. He further noted that, in its recommendations in 1994, the Committee had emphasized the issue of indigenous people's consent for any matters relating to land rights. The representative of Australia had just explained that it had not been possible to obtain such consent and achieve consensus when the Native Title Amendment Act 1998 had been adopted, despite the very lengthy parliamentary procedures and public debate initiated in the country. If that was the case, what role had Aboriginals and indigenous people played in the process? The Australian Government clearly considered that the concept of consent could only be an aspiration, which was not at all the Committee's view.

29. The representative had stated that the Native Title Amendment Act 1998 had two main objectives: on the one hand, to facilitate the restitution of indigenous lands and, on the other, to prevent further extinguishments of native title. That was highly commendable, but what exactly did "facilitate restitution" mean? According to the explanations given by the delegation, it seemed "facilitating restitution" meant that Aboriginals could buy the lands. However, in international law, restitution was a right: in other words, what had belonged to an individual should be restored to him without his having to give something in return. Was that how the Australian Government understood the concept of restitution?

30. The CHAIRMAN, speaking as a member of the Committee, associated himself fully with Mr. van Boven's comments. The lengthy legal explanations given by the Australian delegation had seemed to him too abstract and too removed from the everyday reality of the people concerned. As he had already had occasion to emphasize, the Committee on the Elimination of Racial Discrimination was not a court.

31. He would have preferred the delegation to be more precise on a number of specific points such as, for example, the nature and origin of the pressure being exerted on the Government not to initiate reforms (one supposed that such pressure came from the white population); the practical measures which had been taken to consult Aboriginals and to try to reach a consensus; and the areas in which Aboriginals genuinely enjoyed equal rights - for example, did they enjoy equality in respect of economic and social rights?

32. He feared that the well-informed statement made by the Australian delegation - the high quality of which he incidentally acknowledged - might hide a somewhat worrying reality.

33. Mr. VALENCIA RODRIGUEZ said that the detailed replies given by the Australian delegation had helped the members of the Committee to understand better the position of the Government and the problems it faced. That did not prevent the Australian regime from being considered discriminatory by a whole section of the population and not only by Aboriginals. He would like to know whether the Government would be prepared to hear opponents' arguments and review its position when it came to further reforms. If so, would it also be prepared to embark on fresh consultations to try to reach a consensus with all sectors of Australian society, including Aboriginals? Such a measure would, in his opinion, be the only way of arriving at a satisfactory solution.

34. Mr. SHAHI thanked the Australian Government for its prompt response to the Committee's request for additional information on a very complex legal issue. The report currently being considered and the delegation's statement had clarified the situation considerably.

35 However, he would like to address two points. First, if he had understood correctly, the Native Title Amendment Act 1998 had resulted in the transfer to State and Territory governments of certain responsibilities - notably in the area of land rights - that had previously lain with the Federal Administration of the Commonwealth of Australia. Although it had been stated that decentralization had not affected the consistency of decisions taken on land rights or land acquisition, he had doubts on that score. Consistency and uniformity were key factors in applying the provisions of the Convention.

36. Secondly, the delegation had not really answered the question of whether the Native Title Amendment Act eroded the provisions of the Racial Discrimination Act 1975. On that subject, he read out a passage from the report addressed to the secretariat of the Committee by ANTaR (Australians for Native Title and Reconciliation), a coalition of 300 Australian organizations. On page 15 of the report, it was stated, in essence, that the 1998 amendments had changed the nature of the Native Title Act in terms of applying the Convention. It also stated that the amended Act introduced norms incompatible with the general principles of non-discrimination set out in the Racial Discrimination Act and which implicitly nullified those principles when they were applied to native title rights.

37. The regression that the adoption of the amended Act represented in regard to native title was also analysed in the report by the Acting Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights and Equal Opportunity Commission. The report cited the amended section 7 of the new Act and concluded that it no longer ensured the protection of native title by the general standards of equality and non-discrimination enshrined in the Racial Discrimination Act.

38. The two reports, which corroborated each other, seemed to him very revealing and he would end his comments at that point.

39. Mr. de GOUTTES said that, compared to the concluding observations arrived at by the Committee in August 1994 after consideration of Australia's previous report, there was now a clear and striking change of tone. Those concluding observations had generally praised the State party and, at the time, the High Court's ruling in the Mabo v. Queensland case had been seen as progress. One wondered, therefore, what had happened in the country to cause such a deterioration in a situation depicted as rather encouraging five years earlier. True, in 1994, seeds of discord had already been detected by the Committee, which had criticized the slowness and complexity of the procedures that Aboriginals had to follow in order to have their land title recognized. The Committee had considered that those problems could become a cause for concern. However, the current deterioration of the situation made it permissible to ask whether there had not been a profound change of attitude in Parliament and in public opinion and what pressure had been exerted on the Government to amend its legislation to the detriment of indigenous people.

40. He would have liked the delegation to be more candid and to say more about the general context in which the new laws had been adopted. Many questions remained on that subject.

41. To conclude, he would like to ask the same question as Mr. Valencia Rodríguez: would the Australian Government be prepared to review its position and engage in genuine consultation with the Aboriginals?

42. Mr. YUTZIS said that, although he was not a lawyer, much less a specialist in common law, he had tried to follow closely the legal explanations given by the Australian delegation, because he was sure that the Committee would have to re-examine the subject currently under consideration.

43. Regarding the representation of indigenous communities, he well understood that, given the cultural and historical context, the concept of "informed consent", on which any agreement was usually based, had been almost untenable in practice, as the Government in fact recognized in paragraphs 28 and 29 of the report. However, it was regrettable that the delegation had not provided more details of the criteria for registering with the Native Title Registrar mentioned in paragraphs 34 and 35. It was also unfortunate that the delegation had not elaborated on events during the "intermediate period", even though that period was now over.

44. He noted that the representative of Australia, having initially explained that property titles would be restored to indigenous people when grants expired, had then said that such restitution would happen when exploitation of the land was finished. He would like to know which of the two explanations was the correct one and, if it were the second, who would decide when exploitation was finished.

45. Finally, he would like to have some information on the reasons for the planned abolition of the post of Aboriginal and Torres Strait Islander Social Justice Commissioner.

46. Ms. SADIQ ALI said the fact that the Special Rapporteur on contemporary forms of racism, Mr. Maurice Glélé Ahanhanzo, had not been able to go to Australia in 1998 as planned meant that the Committee had little first-hand information on a very complex situation.

47. Therefore, she suggested that the expert responsible for considering the situation in Australia, Ms. McDougall, be invited to go to the country so as to be in a position to give the Committee a detailed report.

48. Ms. McDOUGALL (Country Rapporteur) said she would welcome additional information on one specific point: the Australian delegation had said that native title rights could be restored when a grant expired. She would like to know how long mining grants usually lasted.

49. Mr. Diaconu took the Chair.

50. The CHAIRMAN invited the Australian delegation to respond to the most recent questions.

51. Mr. GOLEDZINOWSKI (Australia) said that, due to shortage of time, his delegation had had to make certain choices and that, since most of the questions asked - particularly by the Country Rapporteur - had related to amendments to legislation, it had given priority to legal explanations.

52. If little had been said about the historical context or what had been called the "intermediate period", that was because those issues had already been dealt with in detail in the previous report submitted to the Committee. It was not at all the fault of the Australian Government but that of the delegation, which had considered that all those points had already been covered.

53. Mr. Aboul-Nasr had wondered whether the Australian Government had given in to the pressure following on the Wik decision. In fact, the very opposite had happened. That decision had recognized that native title rights to pastoral lease lands could still be claimed. The reaction of most Australians had been to demand the extinguishment of native rights and they had put pressure on the Government to legislate to that effect. It was therefore after extensive consultations with all parties, including representatives of the indigenous people, and a political debate of unprecedented scope and duration that the Government had decided to adopt what it had seen as a compromise. The solution had satisfied no one since no consensus, on the part either of the representatives of indigenous people or of their opponents, had been reached, despite the Government's efforts.

54. The amended Act had thus been adopted after the Government had heard everyone's point of view. It was in no way the result of a decision taken by a small group of politicians meeting in a room in Parliament. However, the subject was still topical. It continued to be debated even in the context of the revision of the Australian Constitution taking place to coincide with the centenary of the Federation of the Commonwealth of Australia in 2001. He therefore wished to reiterate that the Act had not been introduced lightly and that it was the culmination of a difficult and lengthy process in which many sectors of the population had taken part.

55. Mr. ORR (Australia), replying to a question from Mr. van Boven, confirmed that the lands to which indigenous people could claim title represented 79 per cent of Australian territory and were generally the most remote and least developed areas, while their title to the remaining 21 per cent, situated mainly along the east coast and making up the richest areas, had been extinguished.

56. Referring to the fact that some members of the Committee would have liked the delegation to recognize the wrong done to indigenous people, he said that such an acknowledgement had been made on many occasions and that he had recognized in his introduction that the extinguishment of Aboriginals' rights had held back the nation's development.

57. He said that lands situated in the 21 per cent of the territory where Aboriginal land rights had been extinguished could be restored to Aboriginals through the Land Fund set up and funded by the Government, which made sums available to indigenous people through the Indigenous Land Corporation, also

set up by the Government, to enable them to buy back land. Moreover, certain provisions in the amended Act also allowed indigenous people to claim a right to land even if that right had been extinguished.

58. In response to Mr. Aboul-Nasr's comment about the legal emphasis of the delegation's replies, he said that the amended Act had raised very complex questions of law and that a legal analysis was necessary in order to give a proper reply.

59. In reply to Mr. Valencia Rodriguez's question, he said that the Government had no plans to review the amended Act but that the Parliamentary Joint Committee on Native Title was responsible for examining the Act's provisions on an ongoing basis.

60. Regarding Mr. Shahi's question as to whether inconsistencies could be caused by the fact that land ownership issues were the responsibility of both the Federal Government and the States and Territories, he said that such issues were traditionally the latter's responsibility. For example, it was the States which approved mining grants. Since the Native Title Act and the amended Act, those issues remained the prerogative of States, although the latter had to observe very strict national rules.

61. With regard to the relationship between the Racial Discrimination Act and the Native Title Amendment Act, he said that, in accordance with Commonwealth law, the provisions of the amended Act had to be applied with due account taken of the Racial Discrimination Act. If, however, an incompatibility arose, the provisions of the amended Act were still applicable. It was up to the Australian Government and the Committee to determine whether the provisions of the two Acts were compatible with each other.

62. In reply to a question by Mr. de Gouttes, he confirmed that profound changes had taken place since the consideration of the State party's previous report, particularly in relations between the Government and indigenous people. It was because the State took account of their interests that it had resisted the pressure to abolish indigenous people's land rights. In so doing, it had fulfilled its obligations under the Convention.

63. Replying to Mr. Yutzis' question on the role of the representative bodies for indigenous people, he said that those organs had been created under the Native Title Act to help indigenous people who wanted to claim a land right and to enable an area of agreement to be found. There were a greater number of provisions relating to those bodies in the amended Act, which should make their task easier.

64. The registration process for land rights claims consisted of two stages. First of all, claimants had to have the validity of their land rights established by an administrative, not a judicial, decision. Next, they could obtain important rights, such as the right to negotiate, the right to be informed of the authorities' activities relating to the land, etc. The aim of the procedure was to enable indigenous people to acquire those rights if their land rights claims were justified.

65. The Intermediate Period Act had been adopted to deal with issues which had arisen between the entry into force of the Native Title Act 1993 and the Wik decision of 1996.

66. On the question of restoring land rights, he said that there were two possible ways in which land rights had been extinguished: either a third party had become the owner of the land by a government decision, or the Government had had, for example, a school or hospital built on the land. Consequently, land rights could be restored to indigenous people if, in the former case, the title-holder wanted to hand over the title to the Government and, in the latter case, if the public building constructed on the claimed land was run-down and the land was no longer used. In both cases, the claimant could submit a request for restitution.

67. He said that the functions of the Aboriginal and Torres Strait Islander Social Justice Commissioner remained the same despite the planned restructuring of the Human Rights and Equal Opportunity Commission, to which the Social Justice Commissioner reported. The other five special commissioners currently in office would cease their activities and only the post of Social Justice Commissioner would be kept. The Commission would ensure that indigenous people could enjoy and exercise their human rights. Moreover, the budget allocated to the Commission would not be reduced.

68. Finally, responding to Ms. McDougall's question about the duration of mining grants, he said that they were issued for 20 or 30 years on average.

69. Mr. GOLEDZINOWSKI (Australia) said that his country would submit its tenth and eleventh periodic reports to the Committee within a few weeks. They would certainly provide answers to questions that the Committee had not had time to raise. He asked the Committee to study the report in detail before drafting its concluding observations on Australia's application of the Convention.

70. Mr. Aboul-Nasr resumed the Chair.

71. The CHAIRMAN invited the Country Rapporteur to sum up the debate.

72. Ms. McDOUGALL (Country Rapporteur) expressed the Committee's appreciation for the seriousness with which the Australian Government had prepared its report and the quality of the dialogue conducted with the delegation, bearing in mind the complexity of the issues addressed.

73. She would like to emphasize certain points, namely that native title represented a traditional and cultural link to the land, recognized by international law, and that, as such, the international community considered any divestment of land to be illegitimate; that Australia had not taken any legislative measures relating to the extinguishment of land rights, which had existed since the distant past; and that the Committee's role was to assess the compatibility of the amended Act with the Convention, regardless of how the Australian Government interpreted the Convention.

74. Finally, she pointed out that the adoption of the Native Title Act had been welcomed when Australia's previous report was being considered because the Act had constituted progress at that time. She wondered if the adoption of the amended Act was a step backwards in that sense.

75. She noted once more that the Committee was dealing with very complex issues which needed to be resolved as a matter of urgency, without waiting for the consideration of Australia's next report. She therefore asked the members to meet to decide how the Committee could continue the debate on native title legislation in Australia after the closure of the current session.

76. The CHAIRMAN commended the Australian delegation on the candour of its statements.

77. The delegation of Australia withdrew.

The meeting rose at 1 p.m.